

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2018-113-C - ORDER NO. 2018-449

JULY 18, 2018

IN RE: Application of Peak Tower, LLC for a	)	ORDER GRANTING
Certificate of Public Convenience and	)	CERTIFICATE AND
Necessity for Authority to Provide Resold	)	APPROVING
and Facilities-Based Local Exchange,	)	ALTERNATIVE AND
Exchange Access and Interexchange	)	FLEXIBLE REGULATION
Telecommunications Services in the State of	)	
South Carolina and for Alternative and	)	
Flexible Regulation	)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of Peak Tower, LLC (“Peak Tower” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide facilities-based and resold local exchange and interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. § 58-9-280 (Supp. 2012) and the rules and regulations of the Commission. By its Application, the Company also requests flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, that all of its future interexchange switched business service offerings be regulated pursuant to the procedures described and set out in Commission Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by Commission Order No. 2001-997 in Docket No. 2000-407-C, and waiver of certain Commission regulations.

The Commission's Clerk's Office instructed the Company to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of the Company and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition ("SCTC"). Subsequent to the intervention, the Company and SCTC reached a Stipulation, attached hereto as Order Exhibit 1.

On June 15, 2018, counsel for the South Carolina Office of Regulatory Staff ("ORS") filed a letter with the Commission setting out that it had reviewed the Application and did not oppose the Commission granting the Application. The ORS also sought to be permitted to be excused from the hearing in the Docket. The Applicant did not object to the ORS request.

A hearing was convened on June 18, 2018, at 10:30 am in the offices of the Commission in Columbia, South Carolina, before Randall Dong, Hearing Examiner. Peak Tower was represented by John J. Pringle, Jr., Esquire. The SCTC did not appear at the hearing. As noted, ORS requested to be excused from the hearing and did not appear.

Richard Saffir, Managing Member and Vice President – Legal/Tax/HR for Peak Tower, appeared via video conference and testified in support of the Company's Application. The record reveals that the Company is a limited liability company ("LLC")

organized under the laws of the State of Delaware and that it is registered to transact business in South Carolina as a foreign LLC.

According to Mr. Saffir, the Company seeks authority as a provider of facilities-based and resold local exchange and interexchange services. Mr. Saffir explained the Company's request for authority, and the record further reveals the Company's services, operations, and marketing procedures. Peak Tower expects to offer wholesale transport and backhaul services to wireless carriers and other service providers. Peak Tower will provide such services using optical technology connecting customer-provided wireless capacity equipment to customer or Peak Tower-provided bi-directional radio frequency to optical conversion equipment. However, Peak Tower is not limited to providing wholesale transport and backhaul services and may provide telecommunications service to other large enterprise customers. Mr. Saffir also discussed Peak Tower's technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. Saffir offered that Peak Tower possesses sufficient financial resources to support its operations in South Carolina.

With regard to management and technical capabilities, the Company's Application and Mr. Saffir's testimony both evidence that the Company's management has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Saffir also testified that the Company will operate in accordance with Commission rules, regulations, guidelines, and Commission orders. Mr. Saffir offered that approval of the Company's Application would serve the public interest.

Mr. Saffir, on behalf of the Company, requests a waiver of 10 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in California. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"). The Company maintains its books in accordance with Generally Accepted Accounting Principles ("GAAP").

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. The Company is organized as an LLC under the laws of the State of Delaware, and is authorized to do business as a LLC in South Carolina by the Secretary of State.
2. The Company desires to operate as a provider of facilities-based and resold local exchange and interexchange services in South Carolina.
3. We find that the Company possesses the managerial experience and capability to operate as a provider of local exchange and interexchange services in South Carolina.
4. We find, based on the financial statements submitted by the Company and the testimony at the hearing, that the Company possesses sufficient financial resources to provide the services as described in its Application and testimony.

5. We find that the issuance of a Certificate of Public Convenience and Necessity to the Company to operate as a provider of local exchange and interexchange telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina by promoting the availability of more innovative services.

6. The Company requests a waiver of 10 S.C. Code Ann. Regs. 103-610 (Supp. 2012). The Commission finds the Company's requested waiver reasonable and understands the potential difficulty presented to the Company should the waiver not be granted. Further, we find that a waiver of 10 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable. Finally, since the Company does not intend to provide retail residential local exchange services, we find that it is appropriate and reasonable to waive 10 S.C. Code Ann. Regs. 103-607 (Supp. 2012). Should the Company offer residential local exchange services in the future in South Carolina, we find that it should comply with the bond requirement of 10 S.C. Code Ann. Regs. 103-607.

7. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280(B)(1) (Supp. 2012).

8. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280(B)(3) (Supp. 2012).

9. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(4) (Supp. 2012).

10. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2) (Supp. 2012).

11. The Commission finds that the provision of local exchange service by the Company “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2012).

12. Following execution of a Stipulation with intervenor SCTC, the SCTC withdrew its opposition to the Application.

13. The ORS was permitted to be excused from the hearing and the fact that it did not oppose the grant of the Application herein is duly noted.

#### **CONCLUSIONS OF LAW**

1. The Commission concludes that the Company possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

3. The Commission concludes that the Company will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of the Company’s Application to provide resold and facilities-based local exchange and interexchange telecommunications

services within South Carolina will serve the public interest by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by the Company will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide local exchange and interexchange telecommunications services as requested by the Company and as set forth in its Application and Mr. Saffir's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to the Company to provide facilities-based and resold intrastate local exchange and interexchange telecommunications services.

8. Should the Company offer residential interexchange services in the future, the Commission adopts a rate design for the Company for its residential interexchange services which include maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation, etc.*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Should the Company offer residential interexchange services in the future, the Company shall not adjust its residential interexchange rates for end-users below the approved maximum level without notice to the Commission and to the public. The Company shall file its proposed rate changes, publish its notice of such changes, and file

affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications, etc.*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. § 58-9-540 (Supp. 2016).

10. The Commission concludes that any intrastate interexchange business telecommunications services offered by the Company shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this “alternative regulation” to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission



has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing, subject to possible challenge within seven (7) days of the filing, in which case the tariff filing will be suspended pending further order of the Commission.

11. The Commission concludes the Company’s local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company’s competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company’s local exchange service tariff filings are presumed valid upon filing, subject to possible challenge within thirty (30) days of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. If an investigation is instituted on a particular tariff filing, notice of the investigation will be provided to the person or entity making the tariff filing and to the Commission. The notice is timely if dated within thirty days of the filing date. Further, any

such tariff filings will be subject to the same monitoring process as similarly situated local exchange carriers.

12. We conclude that the Company's request for waiver of 10 S.C. Code Ann. Regs. 103-610 should be granted, since strict compliance with the regulation potentially causes undue hardship on the Company. We also grant exemption from the policies requiring the use of USOA, and initially grant waiver of S.C. Code Ann. Regs. 103-607.

13. The Stipulation between the Company and the SCTC should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to the Company to provide facilities-based and resold local exchange and interexchange telecommunications services within the State of South Carolina.

2. The regulatory treatment adopted for the Company's services shall conform to the design described in Conclusions of Law above.

3. If it has not already done so, the Company shall file its revised tariff utilizing the Commission's e-filing system for tariffs within thirty (30) days of the receipt of this Order. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to [etariff@psc.sc.gov](mailto:etariff@psc.sc.gov) to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

4. The Company shall resell the services of only those local exchange carriers (LECs) authorized to do business in South Carolina by this Commission.

5. The Company shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, the Company shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

6. Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the ORS website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov), and the appropriate form is entitled "Gross Receipts Form."

7. Each telecommunications company certified in South Carolina is required to file annually with the ORS the State Universal Service Fund ("USF") worksheet, which may be found on the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The State USF worksheet is due to be filed annually no later than **August 1<sup>st</sup>** with the Commission and ORS.

8. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. The Company shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.sc.gov/reference/forms.asp](http://www.psc.sc.gov/reference/forms.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

9. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

10. The Company requested a waiver of 10 Code Ann. Regs. 103-610 (Supp. 2012), which requires that records required by the Commission’s Rules and Regulations be maintained in South Carolina. The Commission finds the Company’s requested waiver reasonable and understands the potential difficulty presented to the Company should the waiver not be granted. The Commission therefore grants the requested waiver. However, the Company shall make available its books and records at all reasonable times upon request by ORS, and the Company shall promptly notify the Commission and ORS if the location of its books and records changes. Further, the Commission acknowledges that the

Company shall maintain its financial records in conformance with GAAP. Finally, we waive the requirement that the Company file a bond pursuant to S.C. Code Ann. 103-607 until such time as the Company provides retail residential local exchange service in South Carolina.

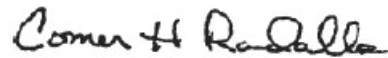
11. In the event that the Company offers or provides any service that would implicate Title 23, Chapter 47 of the South Carolina Code Annotated, the Company is required to comply with that Title and Chapter, which governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911” system or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, in the event the Company offers or provides the appropriate services, the Commission hereby instructs the Company to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating, should the Company become interconnected to the public switched telephone network. Contact with the appropriate 911 service authorities is to be made before beginning local exchange telephone service in South Carolina. Located on the homepage of this Commission’s website at [www.psc.sc.gov](http://www.psc.sc.gov) is a “Quick Link” column. One of the tabs in this column is called “E- 911 Information.” Clicking on this tab will provide a list of county and city E-911 coordinators with contact information. By this Order and prior to providing voice or dialtone services in South Carolina, the Company shall contact the 911 coordinator in each county (and city where

the city has its own 911 system) and shall provide information regarding the Company's operations as required by the 911 system.

12. The Stipulation with SCTC is hereby approved and incorporated as part of this Order.

13. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Comer H. "Randy" Randall, Chairman

ATTEST:



Jocelyn Boyd, Chief Clerk/Administrator